

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RYAN KERWIN : CASE NO. 05-93 ERIE
:
VS. : MAGISTRATE JUDGE SUSAN BAXTER
:
LT. WILLIAM MCCONNELL : DISTRICT JUDGE SEAN MCLAUGHLIN

BRIEF IN SUPPORT OF MOTION TO AMEND ORDER

Federal Rule of Civil Procedure 37(a)(4)(A) states:

If the motion (to compel) is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Because the motion to compel was granted in it's entirety, because plaintiff made a good faith effort to confer with the defendant before filing the motion to compel (See Exhibit "C" and certification of conference attached to motion to compel), and because the defendant has failed to show the court that his behavior was "substantially justified", an award of expenses in this case is mandatory.

WHEREFORE, plaintiff respectfully requests that this honorable court readdress his motion to compel and amend it's order granting the motion to compel to include an award of expenses (\$25.00) to be paid by defendant and to plaintiff.

Respectfully submitted,

2/17/06

Date

Ryan Kerwin

Ryan Kerwin

DZ0246

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